
**Children & Family Services
Committee**

HB 1281

Brief Description: Adding to the list of persons who may give informed consent to medical care for minors and providing immunity to health care providers and facilities when they rely upon the representation of a person claiming to be responsible for the care of the minor.

Sponsors: Representatives Pettigrew, Hinkle, Kagi, Walsh, Schual-Berke, McDonald, Clibborn, Dickerson, Dunn, P. Sullivan, Orcutt, Darneille, Morrell, Campbell, Wallace and Chase.

Brief Summary of Bill

- Modifies the informed consent statute to permit a person who represents himself or herself as having authority to consent to medical care for a child to be the last person on hierarchical the list of persons who may consent to medical care for the minor child.
- Provides immunity to health care providers from liability in any suit based upon their reliance on the representations of a person claiming to be responsible for the medical care of a child.

Hearing Date: February 2, 2005.

Staff: Sonja Hallum (786-7092).

Background:

In 2001 the Legislature directed the Washington State Institute for Public Policy (WSIPP) to study the prevalence and needs of families who are raising related children. In June 2002 the WSIPP issued a report describing the prevalence and characteristics of kinship care, needs of kinship care providers in the state, policies and services available in Washington and other states, and policy options that may increase appropriate kinship care placements.

Among the findings of the WSIPP study was the recognition that because kinship caregivers lack legal standing, they can face barriers in raising the children in their care. The kinship caregiver workgroup convened by Department of Social and Health Services (DSHS) in response to the study recommended that Washington adopt a law that would authorize relative caregivers to enroll a child in school and obtain medical care for the child.

In Washington state, a person has the right to make his or her own health care decisions. Under the principle of "informed consent," medical care must be explained to the patient so that he or

she understands it and can make informed decisions. Treatment without consent, however, is allowed and will generally be provided in an emergency unless the patient indicates otherwise.

If the patient is determined to be incapacitated or incompetent to make health care decisions, a surrogate decision maker must speak for him or her. If a person is under the age of 18, he or she is considered to lack capacity to make most health care decisions. There is a specific hierarchy of appropriate decision makers defined by state law. The following is the list of persons, in order of priority, who may consent to medical treatment on behalf of another person:

- 1) A guardian who has been appointed by a court;
- 2) The person named in the durable power of attorney with health care decision-making authority;
- 3) A spouse;
- 4) Adult children;
- 5) Parents; and
- 6) Adult brothers and sisters.

If a kinship caregiver is not a person who is on the above list, the caregiver may not consent to medical treatment for the child in his or her care.

Summary of Bill:

The list of persons who may provide informed consent for medical care is changed to permit to a person who is authorized to consent to medical care on behalf of the child to give consent for medical treatment.

The following is the list of persons, in order of priority, who are authorized to consent to medical care on behalf of a minor under the age of 18:

- 1) A guardian appointed by the court;
- 2) Parents of the minor; and
- 3) A competent adult who represents himself or herself to be responsible for the health care of the minor child.

The health care provider may, but is not required to, rely upon the representations of a person claiming to be responsible for the care of the minor child, so long as the provider does not have actual knowledge of the falsity of the person's representations.

The provider may request documentation to verify the person's claimed status as being responsible for the care of the child.

An immunity clause is added to state that a health care provider who relies upon the representations of a person claiming to be responsible for the child is immune from liability in any suit based upon the reliance.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.